



DEPARTMENT OF DEFENSE
WASHINGTON HEADQUARTERS SERVICES
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

August 6, 1999

ADMINISTRATIVE INSTRUCTION NO. 102

SUBJECT: Office of the Secretary of Defense (OSD) Federal Register (FR) System

- References: (a) [DoD Directive 5025.1](#), "DoD Directives System," June 24, 1994
(b) Executive Order 12866, "Regulatory Planning and Review," September 30, 1993
(c) Section 601, *et seq.* of title 5, United States Code, "Regulatory Flexibility Act"
(d) Chapter 25 of title 2, United States Code, "Unfunded Mandates Reform Act"
(e) through (p), see enclosure 2

1. PURPOSE

This Instruction:

1.1. Implements reference (a) to provide guidance for the preparation and submission of rulemaking documents (including DoD Directives, DoD Instructions, DoD Publications, and their changes) and notices to be published in the Federal Register (FR).

1.2. Prescribes uniform procedures, style and format requirements.

2. APPLICABILITY AND SCOPE

This Instruction applies to:

2.1. The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector

General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to as "the DoD Components").

2.2. Joint DoD Components in the National Capital Region when administrative support services are provided by Washington Headquarters Services (WHS).

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 3.

4. POLICY

In accordance with DoD Directive 5025.1 (reference (a)), it is DoD policy that:

4.1. A uniform system is established governing the preparation, coordination, approval, and publication of rulemaking documents and notices to be published in the FR.

4.2. DoD Components adhere to established internal and legislative requirements.

4.3. Rulemaking documents and notices be written clearly and concisely.

4.4. Any revisions, changes, or cancellations of a DoD issuance that have been codified in the FR will have such action also published in the FR.

4.5. Rulemaking documents removed from the Code of Federal Regulations (CFR) shall be formally coordinated with the Office of the General Counsel of the Department of Defense (OGC, DoD).

5. RESPONSIBILITIES

5.1. The Director of Administration and Management, Office of the Secretary of Defense, as the DoD Regulatory Policy Officer, shall:

5.1.1. Monitor the regulatory activities within the Department of Defense to ensure uniform compliance with the implementation of Executive and Legislative requirements.

5.1.2. Review, coordinate, and approve all rules and notices originated within the DoD Components for FR publication.

5.1.3. Designate an OSD Federal Register Liaison Officer (FRLO).

5.1.4. Delegate to the FRLO the authority to act as the central point of contact for FR and the CFR matters.

5.1.5. Forward the following documents to the Office of Management and Budget (OMB):

5.1.5.1. A description of rules as prescribed in E.O. 12866 (reference (b)).

5.1.5.2. OMB Form 83-R, "Executive Order 12866 Submission," and supporting documentation if it has been determined that the rule is significant as defined in E.O. 12866 (reference (b)).

5.1.6. Forward all final rules and a concise general statement to the Acting Comptroller General of the United States, the President of the Senate, and to the Speaker of the House of Representatives.

5.2. The OSD Principal Staff Assistants shall:

5.2.1. Participate in the regulatory activities of the Department of Defense and adhere to guidelines provided by the Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), and adhere to the following:

5.2.1.1. Ensure compliance with E.O. 12866 (reference (b)), 5 U.S.C. 601 et seq. (reference (c)), Chapter 25 of 2 U.S.C. (reference (d)), 44 U.S.C. 3501 et seq. (reference (e)), and E.O. 12606 (reference (f)).

5.2.1.2. Ensure compliance with 5 U.S.C. 552b(c)(1) (reference (g)); and that both rules and notices comply with established FR format.

5.2.1.3. Ensure a description of rules, an electronic copy and a paper copy of the document are forwarded to the FRLO.

5.2.1.4. Ensure approved rules and notices, including certifications, statements of determination and OMB Form 83-R for the organizations under their cognizance are provided to the DA&M, OSD, for regulatory review, OMB review, and publishing in the FR.

5.2.2. Review and approve rules and notices, including certifications and statements of determination that are prepared by the organizations under their cognizance.

5.2.3. Approve and sign certifications, statements of determination, and OMB Form 83-R, if required.

5.2.4. Provide Statements of Regulatory Priorities and summaries of significant regulatory actions for the organizations under their cognizance to the FRLO for inclusion in the annual Regulatory Plan in accordance with E.O. 12866 (reference (b)).

5.2.5. Provide written justification for emergency printing in the FR when required.

5.3. The General Counsel of the Department of Defense shall:

5.3.1. Provide legal advice on FR actions.

5.3.2. Review and coordinate on all rulemaking documents.

5.3.3. Approve the removal of obsolete or rescinded information contained in the CFR.

5.4. The Director, Office of Management and Budget, in accordance with E.O. 12866 (reference (b)):

5.4.1. Reviews the description of rules provided by the DA&M, OSD, and determine which rules require formal review by OMB.

5.4.2. Approves the publication of rules that do not require OMB review and those that have satisfied OMB and legislative requirements.

5.5. The Director, Office of the Federal Register, in accordance with the Federal Register Act (reference (h)):

5.5.1. Reviews and approves rules and notices for compliance with the Office of the Federal Register (OFR) requirements.

5.5.2. Displays approved rules and notices for public inspection.

5.5.3. Publishes rules and notices in the FR and CFR.

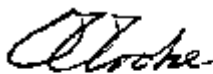
5.5.4. Ensures the distribution of paper copies of the FR and CFR.

6. PROCEDURES

Procedures for preparing and submitting rulemaking documents and notices for the FR are in enclosures 5 through 8.

7. EFFECTIVE DATE

This Instruction is effective immediately.


D. O. Cooke, Director
Washington Headquarters Services

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- E3. Definitions
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E1. ENCLOSURE 1

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E2. ENCLOSURE 2

REFERENCES, continued

- (e) Section 3501, et seq. of title 44, United States Code, "Paperwork Reduction Act of 1995"
- (f) Executive Order 12606, "Assessment of Federal Regulations and Policies on Families," September 2, 1987
- (g) Section 552b(c)(1) of title 5, United States Code
- (h) Chapter 15 of title 44, United States Code, "Federal Register Act"
- (i) Section 552b(e)(3) of title 5, United States Code, "Government in the Sunshine Act"
- (j) Section 3506(c)(2) of title 44, United States Code
- (k) Section 3507(a)(1)(D) of title 44, United States Code
- (l) [DoD Directive 5105.4](#), "Department of Defense Federal Advisory Committee Management Program," September 5, 1989
- (m) Appendix II of title 5, United States Code
- (n) Title 3, Code of Federal Regulations
- (o) DoD 5400.11-R, "Department of Defense Privacy Program," August 1983, authorized by [DoD Directive 5400.11](#), June 9, 1982
- (p) Chapter 8 of title 5, United States Code, "Small Business Regulatory Enforcement Fairness Act"

E3. ENCLOSURE 3

DEFINITIONS

E3.1.1. Add. Term used to instruct the reader to insert a new word, sentence, or CFR unit.

E3.1.2. Amend. Term used to instruct the reader to change a previously published CFR unit.

E3.1.3. Amendatory Language. Words or phrases used to describe each specific CHANGE to be made to the rulemaking document. See also definitions Add, Amend, and/or Revise.

E3.1.4. Amendment. The action taken to change CFR text. This action is comparable to a change to, or cancellation of, a DoD issuance. ANY CHANGE OR CANCELLATION MADE TO A CODIFIED DoD ISSUANCE MUST BE MADE TO BOTH THE ISSUANCE AND THE CFR.

E3.1.5. Authority Citation. The Secretarial, Legislative, or Executive authority to sanction or approve the issuance of a rule.

E3.1.6. Closed Meeting. A published announcement of a scheduled meeting that is NOT open to the public because of classified information discussions.

E3.1.7. Code of Federal Regulations (CFR). The annual publication of final rules that is divided into 50 titles representing broad subject areas of Federal Agencies; e.g., Title 32, National Defense, contains DoD rules. Each title of the CFR is divided as follows:

E3.1.7.1. Chapter and Subchapter. The division of a title assigned to a Federal Agency or one of its components. Chapters are identified by Roman numerals; e.g., I, II, III, etc. The subchapter is used to group related parts within the chapter and are usually identified by capital letters; e.g., A., B., C., etc.

E3.1.7.2. Part and Subpart. The division of a chapter consisting of a unified body of rules applying to a single function of the issuing Agency that is devoted to a specific subject matter under the control of that Agency. A part is identified by Arabic numerals throughout each title; e.g., 1., 2., 3., etc. A subpart is used to group related sections within a part and is identified by capital letters.

E3.1.8. Codification. The collection of CFR units arranged in systematic order.

E3.1.9. Common Rule. A document implementing a Legislative policy objective that is common to the programs of more than one Federal Agency or identical requirements that pertain to more than one Federal Agency.

E3.1.10. Correct. To amend previously published administrative error(s).

E3.1.11. Federal Register (FR). A daily Federal workday publication that makes notices and rules issued by Federal Agencies and the President available to the public and Federal Agencies.

E3.1.12. Final Rule. A concluding document published in the FR and CFR that presents the decision of the issuing Agency and addresses public comments. When a final rule is withdrawn, it is indicated that the rule will not become effective if the effective date has been reached.

E3.1.13. Interim Final Rule. A document that is published in the CFR without prior publication of a proposed rule, usually to respond to an emergency situation or in response to a Legislative or Executive requirement. This document may request public comments. If an interim final rule becomes permanent, a final rule is published in the FR to adopt the interim final as it was published or with changes and a discussion of any comments. If an interim final rule is in effect as of the revision date of the CFR volume, it will be included in that volume. When the effective date of the CFR volume expires (when specifically identified), the OFR shall automatically remove the interim final rule from the CFR volume.

E3.1.14. Introductory Text. An opening statement that presents paragraphs in the CFR.

E3.1.15. Joint Rule. Documents implementing certain Legislation, Agency reorganization, or jointly administered programs or activities. An appropriate approving official from each Agency signs the document when two or more Federal Agencies are identified in the heading and preamble of the rule.

E3.1.16. Notice. A document announcing information of public interest, such as a meeting or statement of availability. It shall not contain regulatory text, impose requirements with general applicability and legal effect, or affect rulemaking proceeding. Some notices are required to be published in compliance with

legislation. All notices of meetings must be published a minimum 15 days before the date of the meeting. See also definitions of Closed Meeting and Open Meeting.

E3.1.17. Open Meeting. A published announcement of a scheduled meeting that is open to the public.

E3.1.18. Preamble. An arrangement of information that answers "who, what, where, when, and why" of a document. It contains the explanatory text necessary for the reader to understand the basis and purpose of the document.

E3.1.19. Proposed Rule. A draft document that is published in the FR requesting public comment.

E3.1.20. Redesignate. To transfer or renumber a CFR unit to another position in the CFR.

E3.1.21. Regulatory Identifier Number (RIN). A document number assigned by the OMB to a regulatory action published in the CFR and Unified Agenda of Federal Regulations.

E3.1.22. Regulatory Plan. A Statement of Regulatory Priorities that identifies the most significant regulatory actions that a Federal Agency expects to issue in the forthcoming fiscal year in accordance with E.O. 12866 (reference (b)).

E3.1.23. Remove. To delete an existing word, sentence, or CFR unit.

E3.1.24. Reserve. To set aside a CFR unit for future uses.

E3.1.25. Revise. To replace a CFR unit in its entirety.

E3.1.26. Rule. A regulatory document, such as a DoD issuance having general applicability to, and legal effect on, the public that is published in the FR and codified in the CFR. See also definitions of Common Rule, Final Rule, Interim Final Rule, Joint Rule, Proposed Rule, and Significant Rule.

E3.1.27. Significant Rule (OMB must formally review all significant rules). Any proposed, interim final, or final rule that:

E3.1.27.1. Has an annual effect on the economy of \$100 million or more or adversely affects, in a material way, the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

E3.1.27.2. Creates a serious inconsistency or otherwise interferes with an action taken or planned by another Agency.

E3.1.27.3. Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

E3.1.27.4. Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of E.O. 12866 (reference (b)).

E3.1.28. Suspend. To temporarily or indefinitely defer a part in the CFR.

E3.1.29. Unified Agenda of Federal Regulations. A consolidated OMB document published in the FR consisting of published rules that have significant public impact and interest.

E3.1.30. Unit. The term used in the FR and CFR to represent the format for text published.

E3.1.31. Withdraw. The action taken to indicate that:

E3.1.31.1. For a proposed rule, the published document is terminated and no further action is being taken.

E3.1.31.2. For a final rule, the published document will not become effective if the effective date has been reached.

E4. ENCLOSURE 4

ACRONYMS

The following is a list of the most common acronyms used when publishing a document in the FR and CFR:

- E4.1.1. CFR - Code of Federal Regulations
- E4.1.2. E.O. - Executive Order
- E4.1.3. FR - Federal Register
- E4.1.4. FRLO - Federal Register Liaison Officer
- E4.1.5. GAO - General Accounting Office
- E4.1.6. OMB - Office of Management and Budget
- E4.1.7. Pub. L. - Public Law
- E4.1.8. RIN - Regulatory Identifier Number
- E4.1.9. U.S.C. - United States Code

E5. ENCLOSURE 5

GENERAL INFORMATION

E5.1. THE FEDERAL REGISTER (FR) SYSTEM

E5.1.1. The FR system requires that notices and proposed, interim, and final rules having a substantial impact on the public be filed with the Office of the Federal Register (OFR). The Director of the FR manages the system. The OFR is responsible for the central filing and publication of the original acts enacted by Congress and the original documents containing Executive Orders and proclamations of the President, other Presidential documents, rules and notices of proposed rulemaking (chapter 15 of 44 U.S.C. (reference (h))). These documents are published in two major publications.

E5.1.2. Federal Register (FR). This daily publication contains all documents identified in paragraph E5.1.1., above.

E5.1.3. Code of Federal Regulations (CFR). This annual publication is a codification of regulations of various Federal Agencies. DoD rules are published in 32 CFR.

E5.2. AMENDMENTS IN THE CFR

When a DoD issuance or document has been altered, that alternation must be also made in the CFR if the basic document was originally published in the CFR.

E5.3. WHICH DOCUMENTS ARE PUBLISHED?

E5.3.1. All documents must be filed for public inspection with the OFR and initially published in the daily FR. Final rules are later published in the CFR during the scheduled CFR revision date. A DoD issuance or document shall be published in the FR for public comment if:

E5.3.1.1. It confers a right or privilege on a segment of the public or has a direct or substantial impact on the public or any significant portion of the public.

E5.3.1.2. It prescribes a course of conduct that must be followed by persons outside the Government to avoid a penalty, or secure a right or privilege.

E5.3.1.3. It constitutes authority for persons outside the Government to act or secure immunity from the consequence of not acting.

E5.3.1.4. It imposes an obligation on the general public or members of a class of persons outside the Government.

E5.3.1.5. It describes where the public may obtain information, instructions, and forms; make submittals or requests; take examinations; or obtain decisions.

E5.3.1.6. It describes procedures by which a DoD Component conducts its business with the public.

E5.4. WHICH DOCUMENTS ARE NOT PUBLISHED?

A DoD issuance or document shall not be published in the FR if:

E5.4.1. It is directed at an individual in his or her capacity as an employee of a Federal Agency or a member of the Armed Forces; e.g., Reservist.

E5.4.2. It is directed at other Federal Agencies or at particular persons or organizations.

E5.4.3. It pertains to a military or foreign affairs function of the United States that has been determined under the criteria of an Executive Order or Statute to require a security classification in the interests of national defense or foreign policy.

E5.4.4. It is limited to Agency organization, management, or personnel matters.

E6. ENCLOSURE 6

NOTICES

E6.1. WHAT IS A NOTICE?

E6.1.1. Agency documents published in the FR that do not contain regulatory text, impose requirements, or affect rulemaking proceedings.

E6.1.2. An Agency document published to provide general information of public interest.

E6.1.3. Announcement of Meetings

E6.1.3.1. All notices of meetings must be published within a minimum of 15 calendar days prior to the date of the meeting in accordance with Chapter 15 of 44 U.S.C. (reference (h)). The notice shall be forwarded to the FRLO at least 5 working days prior to the anticipated publication date.

E6.1.3.1.1. Open meeting. A meeting that allows public attendance.

E6.1.3.1.2. Closed meeting. A meeting that restricts attendance for reasons of national security in accordance with 5 U.S.C. 552(c)(1) (reference (g)). This meeting may be wholly or partially closed to the public.

E6.1.3.1.2.1. A statement of determination must be forwarded to the FRLO signed by the PSA and coordination with OGC, DoD. This statement shall include the legal authority for the closed meeting and a summary of the meeting activities. The determination may be included in the request to publish memorandum to the DA&M.

E6.1.3.2. When outstanding circumstances prevent the ability to publish within the required timeframe, an explanation must be included in the notice.

E6.1.4. Sunshine Act Meetings. Notices published in compliance with 5 U.S.C. 552b(e)(3) (reference (i)). All Sunshine Act notices must be provided to the FRLO by noon of the day before publication in the FR.

E6.1.5. Paperwork Reduction Act Notices. The Paperwork Reduction Act of 1995 (reference (e)) requires two notices be published in the Federal Register. The

first notice is published at least 60 days in advance of submission of the clearance package to OMB (44 U.S.C. 3506(c)(2)) (reference (j)). The second notice is published at the time the clearance package is submitted to OMB (44 U.S.C. 3507(a)(1)(D)) (reference (k)). The Directorate for Information Operations and Reports (DIOR), WHS, will publish the second notice, offering a 30-day public comments period. For formatting requirements, etc., contact the Agency paperwork clearance officer within each organization.

E6.1.6. Advisory Committee Notices. Notices of the establishment and renewal of advisory committees. These notices are published in accordance with DoD Directive 5105.4 (reference (l)) and Appendix II of 5 U.S.C. (reference (m)). They are prepared by the DoD Committee Manager, Organizational and Management Planning and forwarded to the FRLO.

E6.2. OTHER TYPES OF NOTICES

E6.2.1. Presidential Documents. Proclamations and Executive Orders that the President orders are published. These documents are compiled annually in 3 CFR (reference (n)). The original Presidentially signed document must be forwarded to the FRLO for publication.

E6.2.2. Privacy Program. The Privacy Act of 1974, as implemented by the DoD Privacy Program (DoD 5400.11-R (reference (o))), requires all DoD Component Privacy Act system of records notices and procedural and exemption rules be published in the FR.

E6.2.2.1. Privacy Act System of Records Notices. All Privacy Act system of records notices (to include any additions, amendments, and/or alterations thereto) shall be published in the FR in accordance with the format prescribed in reference (o). The DoD Component privacy point of contact must forward the notice to the Director, Defense Privacy Office (DPO), WHS, for review. Upon approval, the DPO shall forward the notice to the FRLO for publication.

E6.2.2.2. DoD Component Privacy Points of Contact. Each DoD Component has a point of contact who is responsible for implementing the Privacy Program within their organization. Contact the DPO for a listing of the designated points of contact.

E6.3. AMENDMENTS

Amendments to notices are published to change the date, location, or correct errors previously published. Reference to the original publication of the notice must be included in the amendment. See attachment E6.A2.

E6.4. CORRESPONDENCE

A memorandum addressed to the DA&M signed by a Principal Staff Assistant (PSA) or designee must accompany the notice. This memorandum shall contain the name and telephone number of a point of contact for the notice. A determination is also required when the notice is an announcement of a closed meeting. An original plus three copies of the notice are required.

E6.5. COORDINATION

All closed meetings and notices with legal requirements must be coordinated with the OGC, DoD.

E6.6. FORMAT

All notices shall use the standard headings for FR publication. The document is double-spaced and typed on plain bond. Each page is numbered and forwarded to the FRLO.

Attachments - 4

E6.A1. Standard Notice Format

E6.A2. Standard Amendment to Notice Format

E6.A3. Example of Request to Publish Notice (Open Meeting) Memorandum

E6.A4. Example of Request to Publish Notice (Closed Meeting) Memorandum
With Determination Statement

E6.A1. ATTACHMENT 1 TO ENCLOSURE 6

STANDARD NOTICE FORMAT

(Plain Bond/Double-Space)

DEPARTMENT OF DEFENSE (Standard)

Office of the Secretary (Standard)

Conference Meeting of the Advisory Committee on Food Services
(Title or Subject of Meeting)

AGENCY: DoD, Advisory Committee on Food (DoD Standard, Agency)

ACTION: Notice (Standard)

SUMMARY: (Standard)

DATES: (Standard)

ADDRESSES: (Standard, when applicable)

FOR FURTHER INFORMATION CONTACT: (Standard. Includes name, and
telephone number)

SUPPLEMENTARY INFORMATION: (Optional. States background information)

E6.A2. ATTACHMENT 2 TO ENCLOSURE 6
STANDARD AMENDMENT TO NOTICE FORMAT

(Plain Bond/Double-Space)

DEPARTMENT OF DEFENSE (Standard)

Office of the Secretary (Standard)

Change in Location of Conference Meeting (Title or Subject of Meeting)

AGENCY: DoD, Advisory Committee on Food (DoD Standard, Agency)

ACTION: Notice (Standard)

SUMMARY: (Standard) This notice is published to change the location of a meeting.

DATES: (Standard)

FOR FURTHER INFORMATION CONTACT: (Standard. Includes name, and telephone number)

SUPPLEMENTARY INFORMATION: On Thursday, May 27, 1999 (64 FR 12345), the Department of Defense published a notice of a meeting of the Advisory Committee on Food Services.

E6.A3. ATTACHMENT 3 TO ENCLOSURE 6

EXAMPLE OF REQUEST TO PUBLISH NOTICE (OPEN MEETING)
MEMORANDUM

(Agency Letterhead)

(Insert date)

MEMORANDUM FOR DIRECTOR OF ADMINISTRATION AND
MANAGEMENT, OFFICE OF THE
SECRETARY OF DEFENSE

SUBJECT: Conference Meeting of the Advisory Committee on Food Services

Request subject notice be published in the Federal Register.

The point of contact for this notice is LTC M. Greene, 703-698-1234.

(Signature of PSA or Director of Defense Agency)

Attachment
a/s

E6.A4. ATTACHMENT 4 TO ENCLOSURE 6

EXAMPLE OF REQUEST TO PUBLISH NOTICE (CLOSED MEETING)
MEMORANDUM WITH DETERMINATION STATEMENT

(Agency Letterhead)

(Insert date)

MEMORANDUM FOR DIRECTOR OF ADMINISTRATION AND
MANAGEMENT, OFFICE OF THE
SECRETARY OF DEFENSE

SUBJECT: Scientific Visual Agency on Telescopic Equipment Meeting

Request subject notice be published in the Federal Register. The point of contact for this notice is LTC M. Greene, 703-698-1234. The determination, as required, by Title 5, United States Code, is as follows:

DETERMINATION TO CLOSE ADVISORY COMMITTEE MEETINGS

The Scientific Visual Agency will meet in closed session on May 5, 2020. The mission of the Agency is to advise the Secretary of Defense, through the Director of Defense Research and Engineering, on scientific and technical matters as they affect the perceived needs of the atmosphere.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92-453, as amended (5 U.S.C. App 11 (1988)), it has been determined that this meeting will be closed to the public. The above determination is based on the consideration that it is expected that discussions will involve classified matters of national security concern. To permit the meeting to be open to the public would prevent discussion of

such matters and would greatly diminish the ultimate use of the Agency's findings or recommendations to the Secretary of Defense.

(Signature of PSA or Director of Defense Agency)

Attachment

a/s

_____ OGC, DoD

E7. ENCLOSURE 7

RULES

E7.1. WHAT IS A RULE?

E7.1.1. A rule is a regulatory document, such as a DoD issuance, or an implementing document that has a general applicability or legal effect on the public.

E7.1.2. It is published in the FR and is codified in the CFR.

E7.1.3. An amendment to a rule is comparable to a change or cancellation of a DoD issuance. Any change or cancellation to a codified DoD issuance must be made to both the issuance and the CFR.

E7.2. TYPES OF RULES

E7.2.1. Proposed Rule. A draft document published in the FR that may or may not request public comments. In accordance with E.O. 12866 (reference (b)), public comment period shall be no less than 60 days from the date of publication.

E7.2.2. Interim Rule. A document published, usually to respond to an emergency situation in response to Legislative or Executive requirement. This rule may or may not request public comments.

E7.2.2.1. If the interim rule becomes permanent, a final rule must be published to adopt the interim rule.

E7.2.2.2. If the interim rule is in effect as of the revision date of the CFR volume, it will be included in that volume. When the effective date of the CFR volume expires, the OFR removes the rule unless a final rule has been published prior to the expiration date.

E7.2.3. Final Rule. A concluding document published in the FR and CFR that presents the decision of the issuing Agency and addresses public comments received.

E7.2.4. Common and Joint Rule. Documents implementing a legislative policy objective that is common to the programs of more than one Federal Agency or identical requirements that pertain to more than one Federal Agency. When implementing Agency reorganization, or jointly administered programs or activities, the two or more

Agencies must be identified in the heading and preamble of the rule. The appropriate official of each Agency must sign the rule.

E7.3. SIGNIFICANT RULE

A proposed, interim, or final rule that:

E7.3.1. Has an annual effect on the economy of \$100 million or more or adversely affects, in a material way, the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

E7.3.2. Creates serious inconsistency or otherwise interferes with an action taken or planned by another Agency.

E7.3.3. Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

E7.3.4. Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of E.O. 12866 (reference (b)).

E7.4. OMB REQUIREMENTS

E7.4.1. Description of Rules. In compliance with reference (b) a description of rules must be forwarded from the FRLO to OMB prior to FR publication (see attachment E7.A1.). The originating officer must forward the document to the FRLO. It confirms the significant or nonsignificant characterization of the rule. OMB determines whether or not they wish to formally review the rule.

E7.4.2. OMB Form 83-R, "Executive Order 12866 Submission." This form must be completed by the originating officer, signed by the PSA as the Program Official, and forwarded to the FRLO. An original plus four copies of the rules must accompany the form. The form may be acquired from the FRLO.

E7.4.3. OMB Form (unnumbered), "Submission of Federal Rules Under the Congressional Review Act." The first page of this form shall be completed by the FRLO. The originating office shall complete the second page and forward it to the FRLO. This form may be acquired from the FRLO.

E7.4.4. Review Time

E7.4.4.1. Decision to Review the Rule. The FRLO shall forward the description of rules to OMB within 48 hours of receipt. OMB shall contact the FRLO within 10 working days of their decision to review. If no response is received within the designated timeframe, approval to publish is assumed.

E7.4.4.2. Formal Review of the Rule. The FRLO shall forward the required number of copies and OMB Form 83-R to OMB. OMB is allowed a 90-day review period. If within the 90 days OMB requires more time, they will contact the FRLO for an extension. The FRLO will notify the originating officer of OMB's request.

E7.4.5. Recommendations or Changes. OMB shall notify the FRLO of any recommendations or changes to the rule. The FRLO shall notify the originating officer of OMB's suggestions. It is the responsibility of the originating officer to address any concerns and forward the changed pages or written rejection to the FRLO. The FRLO shall forward the correspondence to OMB.

E7.4.6. Approval. OMB shall approve the publication of any rules that does not require review. They shall also approve any rules that had issues once they have been resolved. Administrative changes do not require OMB approval. All other rules may not be published without OMB approval.

E7.5. INTERNAL REQUIREMENTS TO PUBLISH A RULE

E7.5.1. Editorial Review

E7.5.1.1. The originating officer shall forward an electronic version (Microsoft Word 97, if available) and one paper copy of the rule to the FRLO. When converting from another word processing program, all style sheets and word processing codes must be removed prior to submission.

E7.5.1.2. The FRLO shall edit and reformat the rule when necessary and return the disk with the recommended suggestions.

E7.5.2. Coordination

E7.5.2.1. All rules must be coordinated with the OGC, DoD. The FRLO will obtain coordination from the GC, WHS. Office of the Assistant Secretary of Defense (Legislative Affairs) coordination is required for final rules.

E7.5.2.2. In addition to the organization identified in paragraph E7.5.2.1., above, all rules in which the "Family Act" (reference (f)) applies must be coordinated with the Family Policy Office in the Office of the Assistance Secretary of Defense (Force Management Policy).

E7.5.3. Correspondence

E7.5.3.1. Certification Memorandum. A certification memorandum addressed to the DA&M signed by the PSA must be forwarded along with the rule (see attachment E7.A3.). The memorandum must address E.O. 12866, 5 U.S.C. 601, et seq. and 44 U.S.C. 3501 et seq. (references (b), (c), and (e)). Consult OGC for legal guidance.

E7.5.3.2. The Rule. The document must be double-spaced. Each page must be numbered from 1 through the last page (see attachment E7.A4.).

E7.5.3.3. Small Business Impact Analysis

E7.5.3.3.1. When it has been determined that the rule does have a significant impact on small entities, an impact analysis is required in accordance with Chapter 8 of 5 U.S.C. (reference (p)). The OGC, DoD, will provide guidance in the preparation of the analysis.

E7.5.3.3.2. An advanced copy should be forwarded to the Office of Advocacy before the final rule is published to ensure that the Component has addressed Advocacy concerns and that no outstanding disagreements remain.

E7.5.4. Unified Agenda Questionnaire. The questionnaire must be completed and forwarded to the FRLO on each rule. See attachment E7.A3.

E7.6. AMENDMENTS.

Amendments are changes published in the CFR to update information or address public comments. An amendment to a rule is comparable to a change or cancellation

of a DoD issuance. Therefore, any change or cancellation to a codified DoD issuance must be made to both the issuance and the CFR.

E7.6.1. An amendment must describe the general effect of the rule and give specific instructions on how to change the CFR. Discussion of why the change is being made or any background information should be stated in the Supplementary Information section of the rule.

E7.6.2. The Use of Asterisks. Asterisks are used as place-holders to indicate unchanged text.

E7.6.2.1. Five Asterisks (* * * * *). Indicates an ENTIRE PARAGRAPH OR SECTION IS UNCHANGED. They also indicate the last change made to a paragraph or section. Three spaces are placed between each asterisk.

E7.6.2.2. Three Asterisks (* * *). Indicates THE HIGHER LEVEL PARAGRAPHS ARE UNCHANGED OR THAT THE BEGINNING OR ENDING OF A SENTENCE IS UNCHANGED. Three spaces are placed between each asterisk.

E7.6.3. Amendatory Language. Specific terms must be used to identify a change to a rule in the CFR. The only acceptable terms used in an amendment are "add, amend, correct, redesignate, remove, reserve, revise, suspend, and withdraw." These terms are explained in enclosure 3 of this Instruction and attachment E7.A6.

E7.6.4. Approval. The DA&M shall approve the publication of any amendments.

E7.7. REGULATORY PLAN

E7.7.1. The OSD Components shall:

E7.7.1.1. Participate in the annual Regulatory Plan by providing the most significant regulatory actions that are expected to be issued as a proposed or final rule in compliance with E.O. 12866 (reference (b)).

E7.7.1.2. Provide input to the Regulatory Plan and provide the narratives to the DA&M, as requested, for approval by the Secretary of Defense for OMB review by June 1st of each year.

E7.7.2. Contact your General Counsel office and the FRLO for further information.

Attachments - 6

- E7.A1. Description of Rules
- E7.A2. Example of a Certification Memorandum
- E7.A3. Unified Agenda and Regulatory Plan Questionnaire
- E7.A4. Standard Rule Format
- E7.A5. Standard Amendment to a Rule Format
- E7.A6. Amendment Terms

E7.A1. ATTACHMENT 1 TO ENCLOSURE 7

DESCRIPTION OF RULES

DESCRIPTION OF RULES

DEPARTMENT/REGULATORY COMPONENT:

Department of Defense/Office of the Secretary (Standard)

TITLE:

RIN: (The FRLO will provide)

PART NUMBER: 32 CFR Part ____

SIGNIFICANT: (Is the document a Significant Rule as defined in section E3.1.27?)

UPCOMING ACTION: (Proposed, Final, or Interim Final Rule)

PLANNED SUBMISSION/PUBLICATION: (When you plan to forward the rule to the OFR)

STATUTORY DEADLINE: (Is there a legal deadline to publish or implement?)

DESCRIPTION: (A short summary about the rule)

**NAME/TELEPHONE NUMBER OF PROGRAM OFFICIAL WHO CAN
ANSWER DETAILED QUESTIONS:**

Signature/Date **PRINTED NAME**

E7.A2. ATTACHMENT 2 TO ENCLOSURE 7

EXAMPLE OF A CERTIFICATION MEMORANDUM

(USE ASD/USD Letterhead)

(Insert date)

MEMORANDUM FOR DIRECTOR OF ADMINISTRATION AND
MANAGEMENT, OFFICE OF THE
SECRETARY OF DEFENSE

SUBJECT: Certification Statement that 32 CFR Part (Insert part number and title of Rule) is not Subject to Executive Order 12866, Public Law 96-354, and Public Law 96-511

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part [Insert part number] is not a significant regulatory action. This rule does not:

(1) Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601 et seq.)

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. INSERT A SUCCINT STATEMENT EXPLAINING THE REASON FOR SUCH CERTIFICATION.

Public Law 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 et seq.)

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

(Signature of PSA)

_____ GC, DoD

E7.A3. ATTACHMENT 3 TO ENCLOSURE 7

UNIFIED AGENDA AND REGULATORY PLAN QUESTIONNAIRE

UNIFIED AGENDA AND REGULATORY PLAN QUESTIONNAIRE

The following information is requested to assist the OSD Federal Register Liaison Officer in completing the entries for the Unified Agenda. The Unified Agenda is a consolidated Office of Management and Budget (OMB) document published in the Federal Register consisting of Agency rulemakings that have a public impact and interest.

NOTE: You should consult your General Counsel for assistance before responding.

Part Number: 32 CFR Part _____

This refers to a unified body of the Code of Federal Regulations (CFR) that applies to a single function of an Agency or to a specific subject matter under the control of an Agency. DoD issuances are contained in Parts 100 through 300 of Title 32 of the CFR. The part number is designated by the OSD FRLO.

RIN Number: 0790-_____, or for CHAMPUS 0720-_____

This refers to an OMB assigned designator used to identify each regulatory action.

Type of DoD Issuance and Issuance Number:

Title of the Rule: (Should be the same as the DoD issuance title)

Agency Point of Contact for the Rule:

This person should be knowledgeable of the content of the rule and be able to answer questions from the public sector. Include the Agency point of contact's:

Name:

Phone Number:

Fax Number:

Email Address:

Authority Citation:

State the legal authority for issuing the rule.

Priority Status of the Rule

1. Indicate whether or not this rulemaking action will be reported in the Regulatory Plan. ☐ Yes or ☐ No

The Regulatory Plan is a Statement of Regulatory Priorities that identifies the most significant regulatory actions that a Federal Agency expects to issue in the forthcoming fiscal year in accordance with E.O. 12866.

NOTE: You should check YES if it is determined that your rule is economically significant.

2. Indicate the priority of the rulemaking action by selecting one of the following five categories:

a. ☐ ECONOMICALLY SIGNIFICANT

This refers to a rulemaking action that will have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

b. ☐ OTHER SIGNIFICANT

This refers to a rulemaking action that is not economically significant but is considered significant by the Agency. This category includes rules that the Agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the Agency Head.

NOTE: These rules may be included in the Agency's regulatory plan.

c. ☐ SUBSTANTIVE, NONSIGNIFICANT

This refers to a rulemaking action that has substantive impacts but is neither Significant, Routine and Frequent, nor Informational/Administrative.

d. ☐ ROUTINE AND FREQUENT

This refers to a rulemaking action that is a specific case of a multiple-recurring application of a regulatory program in the CFR and that does not alter the body of the regulation.

NOTE: If a rulemaking that normally falls into this category is submitted to OMB for review, the rulemaking must then be classified as Other Significant; Substantive, Nonsignificant; or Informational/Administrative; and not as Routine and Frequent.

e. ☐ INFORMATIONAL/ADMINISTRATIVE/OTHER

This refers to a rulemaking action that is primarily informational or pertains to Agency matters not central to accomplishing the Agency's regulatory mandate but that the Agency places in the Agenda to Inform the public of the activity.

3. Indicate whether the rulemaking action is covered under section 202 of the Unfunded Mandates Reform Act (P.L. 104-4) because it includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in one year.

☐ Yes or ☐ No

4. If your answer was YES to item 3, above, indicate who will be affected by the rulemaking action by choosing one of the two following categories:

- a. ☐ State, local, or tribal governments
- b. ☐ Private sector

5. Indicate whether or not the rulemaking action has an affect on family well-being in accordance with Section 654 of the Treasury and General Government Appropriations Act of 1999, because it strengthens or erodes the stability or safety of the family and, particularly, the marital commitment; strengthens or erodes the authority and rights of parents in the education, nurture, and supervision of their children; helps the family perform its functions, or substitutes governmental activity for the function; increases or decreases disposable income or poverty of families and children; proposes benefits that justify the financial impact on the family; may be carried out by State or local government or by the family; and establishes an implicit or explicit policy concerning the relationship between the behavior and personal responsibility of youth, and the norms of society. ☐ Yes or ☐ No

6. Indicate whether or not the rulemaking action is considered "major" and therefore subject to the 60-day deferral requirement under 5 U.S.C. 801, enacted by P.L. 104-121, because it has resulted or is likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

____ Yes or ____ No

Effects on Small Entities and Levels of Government

1. Indicate whether or not the rulemaking action is expected to have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)). ____ Yes or ____ No

If your answer was YES to item 1, above, indicate who will be affected by the rulemaking action from the following list of categories (check all that apply):

- a. ____ Businesses
- b. ____ Government jurisdictions
- c. ____ Organizations

3. Indicate whether or not the rulemaking action is expected to affect levels of government. ____ Yes or ____ No

4. If your answer was YES to item 3, above, indicate who will be affected by the rulemaking action from the following list of categories (check all that apply):

- a. ____ State
- b. ____ Local
- c. ____ Tribal
- d. ____ Federal

Reinventing Government

1. Indicate whether or not the rulemaking action is part of the Reinventing Government effort. ____ Yes or ____ No

2. If your answer was YES to item 1, above, indicate how the rulemaking action will change the CFR by selecting one of the following categories:

- a. ☐ Eliminating existing CFR text
- b. ☐ Revising CFR text to reduce burden or duplication, or streamline requirements

Signature and Printed Name of Action Officer

Date

E7.A4. ATTACHMENT 4 TO ENCLOSURE 7

STANDARD RULE FORMAT

(Plain Bond/Double-Space)

DEPARTMENT OF DEFENSE (Standard)

Office of the Secretary (Standard)

How to Publish a Rule (Title or Subject of Rule)

AGENCY: DoD, Office of Rulemaking (DoD Standard, Agency)

ACTION: Proposed rule (Standard)

SUMMARY: (Standard. Must answer what you are doing, why, and what impact, if any, does it have on the public)

DATES: (Standard. Proposed rule: Identifies the date comments must be received. Final rule: The heading should be EFFECTIVE DATE)

FOR FURTHER INFORMATION CONTACT: (Standard. Include name, and telephone number)

SUPPLEMENTARY INFORMATION: (Standard. Identifies background and additional information. It MUST include the certification information (compliance with legislative requirements, etc.), List of Subjects, and Words of Issuance). An extract is shown below:

EXECUTIVE ORDER 12866: (Standard. Addresses compliance with legislative requirements)

It has been determined that this rule is not a significant regulatory action...

List of Subjects in 32 CFR part 123 (Standard. The FRLO will provide the subjects)

Accordingly, 32 CFR part 123 is added as follows: (Standard. The action changes (add, revise, etc.))

PART 123 - HOW TO PUBLISH A RULE (TITLE. ALWAYS UPPER CASE TYPE)

Sec.

123.1 Purpose (Standard table of contents identifying the rule)

Authority: 10 U.S.C. 301 - (Standard heading. Identifies governing authority)

E7.A5. ATTACHMENT 5 TO ENCLOSURE 7
STANDARD AMENDMENT TO A RULE FORMAT

DEPARTMENT OF DEFENSE (Standard)

Office of the Secretary (Standard)

How to Publish a Rule (Title or Subject of Rule)

AGENCY: DoD, Office of Rulemaking (DoD Standard, Agency)

ACTION: Proposed rule; amendment (Standard)

SUMMARY: (Standard)

DATES: (Standard)

FOR FURTHER INFORMATION CONTACT: (Standard)

SUPPLEMENTARY INFORMATION: (Standard)

On Monday, July 1, 1999 (64 FR 11223), the Department of Defense published a proposed rule on "How to Publish a Rule."

EXECUTIVE ORDER 12866: (Standard)

It has been determined that this rule is not a significant regulatory action...

List of Subject in 32 CFR part 123 (Standard)

Accordingly, 32 CFR part 123 is amended to read as follows:

1. The authority citation for part 123 continues (if applicable) to read as follows:

Authority: 10 U.S.C. 301

(Standard. Must be the first amendment identified. State whether the authority has been changed or not.)

2. Section 123.1 is amended by revising paragraph (b)(1) to read as follows:

PART 123 - HOW TO PUBLISH A RULE (TITLE. ALWAYS UPPER CASE TYPE)

§123.1 Purpose.

* * * * * (Standard indicating no change in paragraph (a))

(b) * * * (Standard indicating no change in the introductory text in paragraph (b))

(1) This is where you revise your new paragraph (b)(1) in its entirety. All information previously published in this paragraph will be removed.

E7.A6. ATTACHMENT 6 TO ENCLOSURE 7

AMENDMENT TERMS

The following are the ONLY terms accepted by the OFR:

<u>TERM</u>	<u>WHAT IT DOES</u>
Add	Adds new section, paragraph, or sentence
Amend	Changes a portion of the section, paragraph, or sentence
Correct	Corrects mistake previously published
Redesignate	Reassigns a section or paragraph designation
Remove	Deletes a section, paragraph, or sentence in its entirety
Reserve	A place-holder for a future section or paragraph
Revise	Rewrites a section, paragraph, or sentence in its entirety. All present information is deleted.
Suspend	Places the rule on hold until a further date
Withdraw	Deletes the rule as though it never existed

E8. ENCLOSURE 8

FEDERAL REGISTER AND CODE OF FEDERAL REGULATIONS PUBLICATION CHECKLIST

E8.1. DO I HAVE EVERYTHING I NEED?

E8.1.1. Notices

- E8.1.1.1. Original notice double-spaced _____
- E8.1.1.2. Each page numbered _____
- E8.1.1.3. An original plus three copies of the notice _____
- E8.1.1.4. Statement of Determination (closed meeting) _____
- E8.1.1.5. General Counsel coordination _____
- E8.1.1.6. Request to publish memorandum to DA&M _____
 - E8.1.1.6.1. Name and telephone number included in memorandum _____
 - E8.1.1.6.2. Memorandum has been signed by the PSA _____
- E8.1.1.7. Original Presidential document forwarded to DA&M _____

E8.1.2. Rules

- E8.1.2.1. Description of rules forwarded to FRLO _____
- E8.1.2.2. Electronic version and one paper copy of the rule forwarded to FRLO _____
- E8.1.2.3. Agenda and Regulatory Plan Questionnaire forwarded to the FRLO _____
- E8.1.2.4. OMB Form 83-R signed by PSA (when applicable) _____
- E8.1.2.5. General Counsel coordination _____
- E8.1.2.6. Legislative Affairs coordination (final rule) _____
- E8.1.2.7. Certification memorandum, to include the request to publish, signed by
PSA to DA&M _____